

### REMARKS

The forgoing Amendment is submitted to address the technical objections to the claims set forth in the Office Action. More specifically the word "alone" has been removed from claims 1, 28 and 55. This is deemed to obviate the section 112 rejection set forth on pages 2 and 3 of the Office Action. Claim 7 has been amended to depend from claim 1, thereby obviating the objection to this claim set forth on page 2 of the Office Action. No new matter has been added by the Amendment and entry thereof is deemed proper and is respectfully requested.

All of the claims (1-9, 28-36 and 55) stand rejected under 35 USC section 112, second paragraph, as being indefinite for use of the term "unpleasant mouthfeel". The Office Action states that it is unclear as to what constitutes "unpleasant mouthfeel", which could be due to the taste of the product, to chewing characteristics of the product, or the texture of the product. It is further stated that the term is indefinite as a food or flavor that may have an unpleasant mouthfeel for some, may have a pleasant mouthfeel for others. The rejection is hereby traversed and reconsideration is respectfully requested.

The term "unpleasant mouthfeel" is associated with the presence of at least one botanical present in the claimed composition. Botanicals are known in the art, and their taste, texture and chewing characteristics are likewise known in the art. Thus, the term "unpleasant mouthfeel", as this term is associated specifically with botanicals, is part of the knowledge of the prior art and would be understood by those of ordinary skill in the art. For this reason alone, the term "unpleasant mouthfeel" is not indefinite under 35 USC section 112.

Furthermore, the specification makes clear what is meant by “unpleasant mouth feel”. As indicated on page 1, lines 22-24, the unpleasant mouth feel of botanicals is usually an unpleasant tingling sensation or astringency. It is further stated at page 2, lines 16-25 that an object of the present invention is to provide the consumer with a hard confectionery product that is both efficacious and has an acceptable taste for oral ingestion. Thus, there is support in the Application that the term “unpleasant mouthfeel” encompasses a product having an unpleasant tingling sensation or astringency and/or a bad taste. The purpose of the present invention is to suppress the “unpleasant mouthfeel” of botanicals (page1, line 13).

As indicated on page 3, line 10, the claimed invention includes a botanical having an unpleasant mouthfeel. One of ordinary skill in the art would therefore know the meaning of this term and how it applies to botanicals. Furthermore, one of ordinary skill in the art would be able to readily identify those botanicals that have an unpleasant mouthfeel.

Furthermore, Katsuragi (EP 0732064) cited as prior art in the present application, discloses that various botanicals have a bitter taste and are in the need of a bitterness-relieving agent (paragraphs 24-26). Bitter taste is one of the components of unpleasant mouthfeel, as indicated above.

Thus it has been shown that certain botanicals are known in the art to have an unpleasant mouthfeel. The present invention is not directed to the discovery of botanicals, or to the discovery that some botanicals have an unpleasant mouthfeel.

That is part of the prior art. The present invention does concern a novel and inventive way of suppressing the "unpleasant mouthfeel" associated with such botanicals. Accordingly, the Application meets all the requirements of 35 USC section 112 as regards the meaning and relevance of "unpleasant mouthfeel" to the claimed invention.

The Amendment to the claims to remove the term "alone" is deemed sufficient to obviate the rejection under 35 USC section 112 as set forth at the bottom of page 2 of the Office Action. The employment of the specified amount of one or more partially hydrogenated vegetable oils or saturated fats is an amount effective to suppress the unpleasant mouthfeel of the botanical. Regardless of whether there are other materials contained within the hard-boiled candy composition that may have an effect on unpleasant mouthfeel, the present invention requires the presence of the specified amount of the particular claimed unpleasant mouthfeel suppressing agent.

The term *suppress* means *to check the flow of or to inhibit*. Thus, the suppression of "unpleasant mouthfeel" means that the partially-hydrogenated vegetable oil or saturated fat reduces the "unpleasant mouthfeel" associated with the botanical contained in the composition so that the degree of unpleasant mouthfeel is less than it would be in the absence of the claimed agent. Accordingly, the possibility that the other components in the composition may have a positive effect on unpleasant mouthfeel does not impact the claimed invention, which requires the presence of the partially-hydrogenated oils or saturated fats in amounts sufficient to suppress the unpleasant mouthfeel of the botanical.

Claims 1, 2, 4-9, 28, 29, 31-36 and 55 stand rejected as obvious over Katsuragi (EP 0732064) in view of Seang (WO 94/05260). The Office Action states that use of a bitterness-relieving agent to suppress the unpleasant mouthfeel associated with a botanical was known at the time of the invention, as taught by Katsuragi. Katsuragi is also stated to teach that the bitterness-relieving agent comprises an ester of a glyceride. Seang is stated to disclose that partially- or fully hydrogenated oils or saturated fats in the amount recited by applicant are capable alone of masking or suppressing the unpleasantness of the mouthfeel of medicinal drugs. The Office Action concludes that modifying Katsuragi's composition by adding saturated fats or hydrogenated oils in the amount taught by Seang would have been obvious to one of ordinary skill in the art. The rejection is hereby traversed and reconsideration is respectfully requested.

Once again, Katsuragi makes it clear that a bitterness-relieving agent is required, and that this agent is an ester of a mono- or diglyceride with a polycarboxylic acid or salt of the same. Not only does Katsuragi show that this type of bitterness-relieving agent is essential to mask the taste of botanicals, but also demonstrates that related materials, such as monoglycerides and diglycerides, do not work. In this regard, the Examiner's attention is directed to Table 2, appearing at the top of page 7 of Katsuragi. It will be noted that the table discloses the effect of 0.5% and 1.5% of bitterness relieving agents A-H. In a comparative test, a monoglyceride and diglyceride were tested as bitterness-relieving agents. Compositions containing these comparative materials were markedly inferior to

those compositions containing the bitterness-relieving agents specifically disclosed in Katsuragi. Similar results are found in Table 4.


Thus, one of ordinary skill in the art would recognize that Katsuragi teaches a specific class of bitterness-relieving agents, and it is only the presence of these agents that provides acceptable masking of the bitter taste of botanicals. Thus, the conclusion reached in the paragraph beginning at the bottom of page 6 of the Office Action that Katsuragi broadly teaches a fat-based bitterness-relieving composition is incorrect. Katsuragi teaches a specific class of materials, which are not the ones claimed in the present Application, and it is only this specific class of materials that achieves the desired effect.

Seang is stated to teach that a liquid coating on certain drugs can be useful to mask the bitterness thereof. However, there is no teaching or suggestion in Seang of eliminating the bitterness-relieving agent of Katsuragi, and particularly the specific group of esters required for that purpose. The combination of the two references requires one of ordinary skill in the art to engage in extensive experimentation and hindsight in order to arrive at the presently claimed invention. Katsuragi requires a class of bitterness-relieving agents that are not the subject of the present invention. Those agents are specific, because related agents (monoglycerides and diglycerides) are taught by Katsuragi to not be useful for the same purpose. There is nothing in this reference or in Seang that eliminates the Katsuragi esters and employs the materials used in the present invention for the same purpose.

For the sake of completeness, the Applicants note the rejection of claims 3 and 30 as obvious over the combination of Katsuragi in view of Seang, further in view of Rayment or Emanuel-King. The latter references are stated to teach that the hard candy can include Echinacea. Applicants do not dispute that a variety of botanicals can be incorporated into hard candies. However, the claimed invention requires a unique method of eliminating unpleasant mouthfeel associated with these types of additives, and none of the references render the same obvious to one of ordinary skill in the art.

In view of the forgoing, Applicant's submit that the present Application is in condition for allowance, and early passage to issue is deemed proper and is respectfully submitted.

Respectfully Submitted,

  
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